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In re application of
Payton et al.
Serial No. 09/842195
Filed: April 26, 2001
For: PH CONTROL OF SAUCES USED ON ACIDIFIED PASTA
OR RICE

DECISION ON
PETITION

This is a response to the PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT for failure to respond to an office action mailed May 13 2004 by the end of the sixth month statutory period. The petitioner requests that abandonment be withdrawn since the applicant did not receive the Office letter mailed May 13, 2004.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee), and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action, TMOG 1156 O.G. 53, November 16, 1993, (see also MPEP 711.03(c) - NEW PROCEDURE TMOG 1170 O.G. 114). A review of the petitioner's evidence indicates that the request has merit. The evidence presented is sufficient to establish that the applicant or any authorized representative of the applicant did not receive the Office letter mailed May 13, 2004. The evidence provided includes a statement by the petitioner that the Office letter mailed May 13, 2004 was not received, a statement that a search of the file and docket records was made, and a statement that the search revealed the Office letter mailed May 13, 2004 was not received. Also provided is a copy of the attorney's application docket records where the Office letter mailed May 13, 2004 would have been posted had it been timely received.

Therefore, the abandonment is hereby withdrawn, and the application is returned to pending status. The application shall be forwarded to the examiner for prompt re-mailing of the Office letter originally mailed May 13, 2004 and restarting of the period of response from the re-mail date thereof.

The Petition is GRANTED.

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